

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 20, 2006

JAMIE NICOLE FERRELL v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Davidson County
No. 2002-B-1119 J. Randall Wyatt, Jr., Judge

No. M2005-01940-CCA-R3-PC - Filed December 7, 2006

Petitioner, Jamie Nicole Ferrell, appeals the post-conviction court's dismissal of her petition for post-conviction relief in which she alleged that her pleas of guilty were not voluntarily and knowingly entered into. After a thorough review of the record, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID G. HAYES and NORMA MCGEE OGLE, JJ. joined.

Cynthia M. Fort, Nashville, Tennessee, for the appellant, Jamie Nicole Ferrell.

Paul G. Summers, Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Victor S. (Torry) Johnson III, District Attorney General; James Sledge, Assistant District Attorney General; and Kathy Morante, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Background

On February 7, 2002, Petitioner was charged with one count of especially aggravated kidnapping, and one count of aggravated robbery, in case number 2002-B-1119, and one count of theft of property of less than \$500.00, in case number 2002-B-789. On February 14, 2003, Petitioner entered into a negotiated plea agreement in settlement of the charges against her. Pursuant to the plea agreement, Petitioner entered a plea of guilty to the charged offenses in case number 2002-B-1119, and the trial court sentenced her as a Range I, standard offender, to concurrent sentences of fifteen years for her especially aggravated kidnapping conviction, and twelve years for her aggravated robbery conviction. As part of the plea agreement, the State agreed to dismiss the charge in case number 2002-B-789.

In case number 2002-B-1119, the State offered as proof that Petitioner invited the victim, Megan Green, to her house on February 7, 2002. Petitioner and the victim were in Petitioner's bedroom talking when Petitioner's co-defendant, Thomas Clayton Felts, III, entered the room, put a gun to the victim's head, and threw the victim onto a bed. After the victim was tied up, Petitioner and Mr. Felts removed some money and an ATM card from the victim's purse. The victim was ordered to disclose her ATM PIN number. Mr. Felts and Petitioner took the victim to a car and put her in the trunk. They drove around for awhile, stopping several times. On one of the stops, Mr. Felts and Petitioner did not return to the car. The victim waited approximately one hour and then freed herself from the car trunk. A motorist saw the victim, her hands still tied behind her back, walking down the street and stopped to help her.

During the guilty plea submission hearing, Petitioner affirmed that she understood that by entering her pleas of guilty she was waiving her right to trial by jury, the right to confront the witnesses against her, and the right to subpoena witnesses to appear and testify on her behalf. Petitioner stated that she had discussed the charges with her counsel and understood the range of punishment that she might receive if tried and convicted of each charged offense. Petitioner affirmed that the information supplied by the State in support of her convictions was correct. Petitioner specifically affirmed that she was not suffering from any mental illness, and that she was not under the influence of alcohol or drugs.

II. Post-Conviction Hearing

Petitioner testified that she only remembered "a little bit" about her guilty plea submission hearing, and she said that she did not remember the trial court asking her about medication or her mental health. Petitioner said that her trial counsel had represented her at a probation revocation hearing before she was charged with the current offenses. Petitioner said that she was reinstated on probation at the conclusion of the hearing, with the condition that she live with her mother so that her mother could supervise the administration of her medication.

Petitioner said that she suffered from "severe anxiety." She was admitted to a psychiatric hospital in New York when she was twelve years old. Upon her discharge, Petitioner returned to her mother's home, but at her own request, was placed with a foster family when she was in the ninth grade. Petitioner moved to Tennessee the following summer to live with her father. Petitioner said that when she was approximately fifteen years old, she was admitted to the Vanderbilt Psychiatric Hospital for a period of time.

Petitioner said that she was referred to Mental Health Cooperative, Inc. following a panic attack in approximately 1999 and remained under their supervision until 2002. Petitioner said she was prescribed a number of medicines including Paxil, Zoloft, Zyprexa and Zestril. After her arrest, Petitioner was incarcerated in the Metro-Davidson County Detention Facility until she entered her pleas of guilty in 2003. Petitioner said that the facility's medical personnel changed her medication periodically.

On cross-examination, Petitioner acknowledged that both the Mental Health Cooperative and the detention facility prescribed Celexa, although other drugs were prescribed as well.

Denise Allen, Petitioner's mother, testified that in addition to her mental instability, Petitioner suffered from bulimia and self-mutilation as a teenager. Ms. Allen said that she did not remember Petitioner's mental health being an issue at the revocation hearing, and she said that she never discussed Petitioner's mental health with her counsel.

Petitioner's counsel testified that he did not recall Petitioner's mental health being an issue at the earlier probation revocation hearing, and stated that Petitioner never mentioned any health problems to him during the course of his representation. Counsel said that he was appointed to represent Petitioner on the current charges at the time of her arraignment. Counsel said that Petitioner agreed to be interviewed by Channel 5 television news before he had the opportunity to meet with her. Petitioner described the offenses and her involvement during the televised interview, and she also gave a similar rendition to the investigating officers. Counsel said that if Petitioner had decided to proceed to trial, her theory of defense would have been based on her contention that she was afraid of Mr. Felts, and that Mr. Felts coerced her into committing the crimes.

Counsel said that he met with Petitioner numerous times between her arrest and the guilty plea submission hearing, and he never saw any indication that a mental evaluation should be requested. Counsel said that Petitioner was able to discuss her case, the evidence against her, and her options. Counsel also served as counsel for the Middle Tennessee Mental Health Institute during committal hearings. As a result of this experience, counsel said that he was familiar with the signs of mental illness.

Counsel said that Petitioner agreed to submit to a polygraph test, but the results were inconclusive. After the inconclusive polygraph test, counsel entered into plea negotiations with the State. When an agreement was reached, Petitioner was given overnight to decide whether or not she wanted to accept the terms of the plea agreement. Counsel said that Petitioner never indicated to him that she did not understand the ramifications of entering a plea of guilty, and she never told him that she was on anti-depression medication.

III. Post-Conviction Claims

Petitioner has abandoned her ineffectiveness assistance of counsel claims on appeal. In her appeal, Petitioner argues that the trial court erred in denying her petition for post-conviction relief because her pleas of guilty were not knowingly and voluntarily entered into. Petitioner contends that the detention facility "was incapable of prescribing her the proper medication" to relieve her anxiety and depression. As a result, Petitioner contends that she did not fully understand the details of her plea agreement or its ramifications.

To sustain a petition for post-conviction relief, a defendant must prove his or her factual allegations by clear and convincing evidence at an evidentiary hearing. *See* T.C.A. § 40-30-110(f);

Momon v. State, 18 S.W.3d 152, 156 (Tenn. 1999). The post-conviction court's findings of fact are conclusive on appeal unless the evidence preponderates otherwise. *See State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). During our review of the issues raised, we will afford those findings of fact the weight of a jury verdict, and this Court is bound by the trial court's findings unless the evidence in the record preponderates against those findings. *See Henley v. State*, 960 S.W.2d 572, 578 (Tenn. 1997); *Alley v. State*, 958 S.W.2d 138, 147 (Tenn. Crim. App. 1997). This Court may not reweigh or re-evaluate the evidence, nor substitute its inferences for those drawn by the post-conviction court. *See State v. Honeycutt*, 54 S.W.3d 762, 766 (Tenn. 2001). All questions concerning the credibility of the witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved by the trial judge, not the appellate courts. *See Momon*, 18 S.W.3d at 156; *Henley*, 960 S.W.2d at 578-79. However, the post-conviction court's conclusions of law are reviewed under a purely *de novo* standard with no presumption of correctness. *See Fields v. State*, 40 S.W.3d 450, 458 (Tenn.2001).

Before a guilty plea may be accepted, there must be an affirmative showing that the petitioner voluntarily and knowingly entered the plea. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 1711, 23 L. Ed. 2d 274 (1969); *State v. Pettus*, 986 S.W.2d 540, 542 (Tenn. 1999). A plea cannot be voluntary if the accused is "'incompetent or otherwise not in control of his mental facilities' at the time the plea is entered." *Blankenship v. State*, 858 S.W.2d 897, 904-05 (Tenn. 1993)(quoting *Brown v. Perini*, 718 F. 2d 784, 788 (6th Cir. 1983)). The trial court must determine if the guilty plea is "knowing" by questioning the defendant to make sure he or she fully understands the plea and its consequences. *Pettus*, 986 S.W.2d at 542; *Blankenship*, 858 S.W.2d at 904.

Because the plea must represent a voluntary and intelligent choice among the alternatives available to the defendant, the trial court may look at a number of circumstantial factors in making this determination. *Blankenship*, 858 S.W.2d at 904. These factors include: (1) the defendant's relative intelligence; (2) his familiarity with criminal proceedings; (3) whether he was represented by competent counsel and had the opportunity to confer with counsel about alternatives; (4) the advice of counsel and the court about the charges against him and the penalty to be imposed; and (5) the defendant's reasons for pleading guilty, including the desire to avoid a greater penalty in a jury trial. *Id.*

The post-conviction court specifically credited counsel's testimony that he did not "see any signs of mental or emotional instability in the Petitioner in his meetings with the Petitioner, which spanned over a year." Neither Petitioner nor her family members raised any issues concerning Petitioner's mental health either during the plea negotiations on the current charges or during her previous probation revocation hearing. In its findings, the post-conviction court stated:

The Court is of the opinion that the Petitioner's plea of guilty was entered into voluntarily, knowingly, and intelligently. The Court finds that on the day of the plea, Judge Steve Dozier asked the Petitioner whether she was under the influence of alcohol or drugs, or suffering from any mental illness, to which the Petitioner replied that she was not. . . . The Court finds that in addition to these responses, the

Petitioner responded that she comprehended the rights that she was relinquishing and the nature and consequences of the charges against her. The Court finds that the Petitioner did not exhibit any indication of impairment to her attorney . . . on the day that she [pled] guilty.

The Court finds that while there was proof that the Petitioner was on different prescription antidepressant medications, there was no proof presented at the hearing that these medications, a combination thereof, or the changing of the medications had any effect on the Petitioner's cognitive abilities. The Court is of the opinion that the Petitioner's plea of guilty was made voluntar[ily] and knowingly.

Based on a careful review of the record, we conclude that the evidence does not preponderate against the post-conviction court's finding that Petitioner's "decision to plead guilty was a voluntary and intelligent choice among the alternatives available to her," and that her plea was voluntarily and knowingly entered. Petitioner is not entitled to relief on this issue.

CONCLUSION

After review, we affirm the judgment of the trial court.

THOMAS T. WOODALL, JUDGE